

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8668 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

JAYENDRABHAI KALABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

Shri H.P. RAVAL, Advocate, for the Petitioner.

Shri T.H. SOMPURA, Assistant Government Pleader, for
the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 01/05/96

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned Assistant Government Pleader Shri T.H.Sompura for the respondents. By consent of the learned Lawyers appearing for the parties, this application is taken up for its hearing and disposal today itself.

2. The grievance voiced by the petitioner in this petition under Article 226 of the Constitution of India is that his revisional application against the appellate order passed by the Collector of Rajkot on 17th November 1994 is not decided and returned to the petitioner on untenable grounds.

3. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that the Assistant Collector at Morvi (respondent No.3 herein) issued one show cause notice on 2nd November/December 1992 calling upon the petitioner to show cause why action should not be taken under the relevant provisions contained in the Bombay Land Revenue Code, 1879 (the Code for brief) for unauthorised digging out red earth from one parcel of land bearing survey No.133/2 admeasuring 7 acres 31 gunthas situated at village Sartanpar taluka Vankaner district Rajkot (the disputed land for convenience). Its copy is at Annexure-A to this petition. Another show cause notice was also issued by respondent No.3 on 1st January 1993 calling upon the petitioner to show cause why the price of the red earth dug out by the petitioner in the sum of Rs.4,15,800 together with fine of Rs.500 should not be recovered under section 43 of the Code for unauthorised digging in the disputed land. Its copy is at Annexure-D to this petition. The petitioner filed his reply on 15th February 1993 thereto. Its copy is at Annexure-B to this petition. Thereafter, by his order passed on 25th November 1993, respondent No.3 ordered recovery of Rs.4,15,800 as price of the red earth dug out from the disputed land and Rs.500 by way of fine from the petitioner under section 43 of the Code. Its copy is at Annexure-C to this petition. The aggrieved petitioner carried the matter in appeal before the Collector of Rajkot (respondent No.2 herein) presumably under section 203 of the Code. By his order passed on 17th November 1994 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-E to this petition. The aggrieved petitioner carried the matter in revision presumably under section 211 of the Code before respondent No.1. A copy of the memo of revision is at Annexure-F to this petition. By one communication of 24th March 1995, respondent No.1 returned it on the ground that the order of respondent No.2 at Annexure-E to

this petition was under the Mines and Minerals Law and the author of the communication had no jurisdiction to entertain and to decide the revisional application thereagainst. Its copy is at Annexure-G to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 226 of the Constitution of India for a writ of mandamus for directing respondent No.1 to entertain and to decide the fate of his revisional application.

4. The impugned communication at Annexure-G to this petition appears to be suffering from the vice of non-application of mind on the part of its author. It appears that the fact that the order of respondent No.2 at Annexure-E to this petition was an appellate order presumably under section 203 of the Code was not taken into consideration by the author of the communication at Annexure-G to this petition. It ought to have been realised that respondent No.3 issued the two show cause notices at Annexures-A and D to this petition under the relevant provisions contained in the Code and not under any law relating to mines and minerals. The appeal before respondent No.2 culminating into the appellate order at Annexure-E to this petition was directed against the order of respondent No.3 at Annexure-C to this petition. The author of the communication at Annexure-G to this petition ought to have realised that respondent No.3 had no authority or jurisdiction to decide the matter arising under the law relating to mines and minerals.

5. It cannot be gainsaid that respondent No.1 is the authority for exercise of revisional powers against the appellate order passed by respondent No.2 at Annexure-E to this petition. The petitioner was justified in approaching respondent No.1 by means of the revisional application at Annexure-F to this petition. Respondent No.1 cannot refuse to entertain such revisional application on its own merits in view of the revisional powers conferred on it by section 211 of the Code.

6. In view of my aforesaid discussion, I am of the opinion that the impugned communication at Annexure-G to this petition cannot be sustained in law. It has to be quashed and set aside. Respondent No.1 deserves to be directed to entertain and to decide the fate of the revisional application at Annexure-F to this petition as expeditiously as possible.

7. In the result, this petition is accepted. The communication issued by and on behalf of respondent No.1

on 24th March 1995 at Annexure-G to this petition is quashed and set aside. Respondent No.1 is directed to entertain and to decide the revisional application at Annexure-F to this petition on its own merits according to law. Rule is accordingly made absolute with no order as to costs.

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